

REMARKS

Claims 1-3 are cancelled without prejudice and disclaimer. Claims 4-5 are added. Review and reconsideration are respectfully requested.

The previous claims were rejected variously under 35 U.S.C. 112, first paragraph. Applicant believes that it does not seem to be reasonable to prohibit a means-plus-function claim on the basis that the specification sets forth only one example of the means claimed. The Federal Circuit has stated, "All one needs to do in order to obtain the benefit of [a generic means expression] claiming device is to recite some structure corresponding to the means in the specification, as the statute states, so that one can readily ascertain what the claim means..."¹ Applicant's specification discloses a means for closing the branches, stating "a spring 19 is compressed between the handles 17 and 18." Thus, one skilled in the art will know and understand what structure corresponds to the means limitation. Accordingly, the new claims 4-5 obviate the need for further rejection.

Previous claim 3 was rejected under 35 U.S.C. 112, second paragraph. The examiner indicated that previous claim 3 would be allowable if rewritten to overcome the claim objections and rejections under 35 U.S.C. 112 and to include all of the limitations of the base claim. Further, the examiner suggested changes to the claim language. New claim 4 embodies a rewrite of previous claim 3, including all of the limitations of the previously rejected base claim, and contains the examiner's suggested language changes. New claim 5 embodies previous claim 2 with reference to new claim 4. Accordingly, the new claims 4-5 obviate the need for further rejection.


In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

¹ *Atmel Corp. v. Information Storage Devices*, 198 F.3d 1374, 1382 (Fed. Cir. 1999).

Appl. No. 10/031,078
Reply to Notice of Non-Compliant Amendment of July 22, 2004

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No.34185.

Respectfully submitted,
PEARNE & GORDON LLP

By: 

Ronald M. Kachmarik, Reg. No. 34512

1801 East 9th Street
Suite 1200
Cleveland, Ohio 44114-3108
(216) 579-1700

Date: July 27, 2004